

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 21st Floor  
San Francisco, CA 94105**

**October 4, 2004**

**File No. RH03029740**

**NOTICE OF PROPOSED REGULATORY ACTION**

**SUBJECT OF PROPOSED REGULATORY ACTION**

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to adopt Title 10, Chapter 5, Subchapter 2, Article 1.3 of the California Code of Regulations. The proposed article prescribes specific mechanisms for the calculation, assessment and collection of fees by the Insurance Commissioner from health insurers to fund a study by the University of California of the efficacy of legislatively mandated benefits currently prescribed by California statutes. The Commissioner is required by California Health and Safety Code section 127660 – 127764 in conjunction with the Department of Managed Care to provide up to two million dollars [\$2,000,000] to fund this study through assessments on health insurers based on Fiscal Years 2002-3, through 2005-6.

**AUTHORITY AND REFERENCE:**

The Insurance Commissioner proposes to adopt the subject regulations under the authority of California Health and Safety Code Section 127660-4. These regulations are intended to implement, interpret and make specific these provisions of the California Health and Safety Code as well as California Insurance Code Section 106.

**HEARING DATE, TIME AND LOCATION:**

No public hearing is scheduled for this rulemaking. Pursuant to California Government Code section 11346.8(a) any person (or their authorized representative) may request that such a hearing be held. To request a hearing, submit the request in writing and direct the request to Debra A. Chaum at the address indicated below. Such request must be made no later than 5:00 p.m. on November 21, 2004.

**PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:**

Debra A. Chaum, Senior Staff Counsel  
California Department of Insurance, Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4115

**DEADLINE FOR WRITTEN COMMENTS:**

All written materials [including e-mail transmissions] must be received by the Insurance Commissioner, addressed to the contact person and address designated above, no later than 5:00 p.m. on December 7, 2004. Any written materials received after that time will not be considered.

**COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:**

The Commissioner will accept written comments transmitted by e-mail provided that they are sent to the following e-mail address: [chaumd@insurance.ca.gov](mailto:chaumd@insurance.ca.gov).

**ACCESS TO HEARING ROOMS:**

Please contact the contact person designated above.

**INFORMATIVE DIGEST:**

**SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW:**

California Health and Safety Code Sections 127760-4 became effective as law on January 1, 2002. This statute requires the University of California to prepare an analysis and systematic review of health benefits currently mandated by Legislature to determine if legislatively mandating that health insurers provide certain health benefits is in the public interest.

The health benefits to be reviewed are specified at California Health and Safety Code Section 127760 (c) and include such important benefits as bone marrow testing for prospective donors, infertility treatments, hearing aids, and treatment for substance related disorders. California Health and Safety Code Section 1277662 (a) requires that the California Department of Insurance and Department of Managed Care provide up to two million dollars towards the cost of this review by assessing health insurers and health care service plans for the costs of the study. Although the referenced statutes requires the Department of Insurance to fund a portion of the above described study, there is no formula set forth for the computation of each individual health insurer's fee. Additionally, the enabling statutes do not specify any mechanism or procedure for the assessment or collection of the required fee.

The Commissioner has determined that the adoption of regulations is necessary in order to effectively administer California Health and Safety Code Sections 127760-3. The regulations proposed herein would do the following:

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

- 1) Define the terms “health insurer”, “number of covered lives”, percent to total ratio” and “total need” as used in these regulations.
- 2) Specify the responsibility of each health insurer to pay an assessment pursuant to the provisions of Health and Safety Code Sections 127660-3 for the Fiscal Years 2002-3, 2003-4, 2004-5.
- 3) Specify that fees assessed and collected are to be deposited in a fund designated as the Health Care Benefits Fund and that the sole purpose of this fund is to provide for the funding of the administrative and operational costs of administering California Health and Safety Code Sections 127660-4.
- 4) Specify the manner in which the Insurance Commissioner may calculate the total amount of all assessments due from health insurers by specifying that total amount of all assessments collected shall equal the total amount of the appropriation contained in the State Budget for the funding of the administrative and operational costs of administering California Health and Safety Code Sections 127660-3 plus or minus amounts that the Commissioner deems necessary as a contingency against unanticipated fluctuations in expenditures and revenues.
- 5) Specify the manner in which the amount of the fee to be assessed shall be calculated for each “health insurer”.
- 6) Specify the that the Department of Insurance shall issue invoices setting forth the amount of fee to be assessed each health insurer and that such invoices are due and payable upon receipt and shall be considered delinquent if not paid within 45 days of issue.

### **EFFECT OF PROPOSED ACTION**

The major effects of the regulations are as follows:

#### **Proposed California Code of Regulations section 2218.60(a)**

Proposed California Code of Regulations section 2218.60(a) defines "health insurer" as used in these regulations. The definition set forth provides that a “health insurer” is any disability insurer that issues a policy of “health insurance” as defined in California

Insurance Code Section 106. The purpose of this definition is to clearly identify those insurers who are subject to the assessment mandated by California Health and Safety Code Sections 127660-4.

**Proposed California Code of Regulations section 2218.60(b)**

Proposed California Code of Regulations section 2218.60(b) defines “numbered of covered lives” as the sum of all named insureds and their dependents insured by a health insurer. The purpose of this subsection is to define one of the key components of the formula used to determine the amount of the fee that each health insurer will be assessed under these regulations. The definition will provide needed clarity regarding a term used throughout the regulations.

**Proposed California Code of Regulations section 2218.60(c)**

Proposed California Code of Regulations section 2218.60(c) defines the term “percent to total ratio as used in these regulations. The term is defined as the total number of covered lives insured by a health insurer in the State of California divided by the total number of covered lives insured by all health insurers in the State of California, The purpose of this definition is to clearly define one of the key components of the formula used to determine the amount of the fee that each health insurer will be assessed. The definition will provide needed clarity regarding a term used throughout the regulations.

**Proposed California Code of Regulations section 2218.60(d)**

Proposed California Code of Regulations section 2218.60(d) defines the term “total need” as the dollar amount that the Department of Insurance stipulated to provide fund the study of mandated benefits required by California Health and Welfare Code Section 127660-4. The purpose of this definition is to clearly define one of the key components of the formula used to determine the amount of the fee that each health insurer will be assessed. The proposed subsection is reasonably necessary as the definition will provide needed clarity regarding a term used throughout the regulations.

**Proposed California Code of Regulations section 2218.61(a)**

Proposed California Code of Regulations section 2218.61(a) requires that every health insurer shall be assessed and shall pay a fee in the amount described for each policy of written in California for insurance or group disability insurance that provides hospital, medical or surgical benefits .This subsection sets forth in a clear fashion that each insurer will be assessed. It clearly informs insurers of their obligation under this law so that it can be complied with. This subsection is reasonably necessary as it provides needed clarity, and specificity as it advises insurers subject to the fee that the fee is one that they will be assessed.

### **Proposed California Code of Regulations section 2218.61(b)**

Proposed California Code of Regulations section 2218.61(b) provides that the Commissioner shall calculate and levy an assessment of all health insurers equal to the appropriation contained in the State Budget for the administrative and operational costs of administering the statutes set forth at California Health and Safety Code Section 127760et.seq. plus or minus amounts the Commissioner deems necessary as a contingency against unanticipated fluctuations in expenditures and revenues as well as amounts the Commissioner deems necessary to correct for over or undercollections in previous years. The purpose of this subsection is to inform the regulated entities that the Commissioner must calculate and levy an assessment on these regulated entities but that

### **Proposed California Code of Regulations section 2218.61 (c)**

Proposed California Code of Regulations section 2218.61(c) authorizes the Commissioner to adjust the amount set forth in (b) above by excluding assessments for fees that are impractical to collect or are so small that the costs of assessment or collection of the fee exceed the amount of the total fee assessed. The purpose of this subsection is to prescribe the manner in which the Commissioner may act to ensure that assessments required by the enabling statute are made. This subsection is reasonably necessary as it provides the specificity needed so that the Commissioner can collect the required assessment, implement the statute and at the same time ensure that the Departments resources are not unnecessarily depleted by this process.

### **Proposed California Code of Regulation section 2218.62 (a)**

Proposed California Code of Regulations section 2218.62 (a) provides that the formula for calculating the fee assessed from each health insurer shall be based on the number of covered lives insured by each health insurer in the calendar year preceding the first day of the fiscal year in which the assessment is made calculated by annual line of insurance. The purpose of this section is to specify the component parts of the formula to be used to determine the amount of the fee assessed from each individual insurer. The enabling statute does not provide a specific formula. This subsection provides the specific component parts of the formula and thereby provides necessary specificity that enables insurers to interpret and to fulfill the obligations imposed upon them by the enabling statute.

### **Proposed California Code of Regulations section 2218.62(b)**

Proposed California Code of Regulations section 2218.62(b) provides the formula for calculating the fee to be assessed. This subsection of the regulations sets forth the following formula: The aggregate of all covered lives insured by an insurer will be used to determine a percent to total ratio for each insurer. The subsection goes on to provide ratio will multiply by the total need [defined in subsection 2218.62 (d)] to calculate the amount of the fee to be assessed each insurer. This subsection is reasonably necessary to

implement, interpret and make specific the enabling statute as this statute does not specify any formula for the calculation of the fee to be assessed.

**Proposed California Code of Regulations section 2218.63(a)**

Proposed California Code of Regulations section 2218.63(a) provides that the Department shall issue an invoice to each health insurer setting forth the amount of assessment owed. The purpose of this subsection is to specify the procedure to be followed by the Department in collecting the fee. This subsection is reasonably necessary to implement, interpret and make specific the enabling statute as this statute does not specify any procedure to be followed by the Department when collecting the fee required by statute.

**Proposed California Code of Regulations section 2218.63(b)**

Proposed California Code of Regulations section 2218.63 (b) provides that invoices issued pursuant to these regulations shall assess a fee calculated in the manner described in 2218.62 (a) from each health insurer for the Fiscal Years 2002-3. , 2003-4. Separate invoices shall be issued for the Fiscal Years 2004-5 and 2005-6, respectively. The purpose of this subsection is to specify the procedure to be followed by the Department in collecting the specified fee. This subsection is reasonably necessary to implement, interpret and make specific the enabling statute as this statute does not specify any procedure to be followed by the Department of Insurance in collecting the fee required by the enabling statute.

**Proposed California Code of Regulations section 2218.63(c)**

Proposed California Code of Regulations section 2218.63 (c) provides that invoices issued pursuant to these regulations shall be considered delinquent if the total amount invoiced is not received within 45 days of the date that the invoice is issued. The purpose of this subsection is to specify the procedure to be followed by the Department in collecting the fee. This subsection is reasonably necessary to implement, interpret and make specific the enabling statute as this statute does not specify any procedure to be followed by the Department of Insurance in collecting the fee required by the enabling statute.

**Proposed California Code of Regulations section 2238.63 (d)**

Proposed California Code of Regulations section 2238.63 (d) provides that fees assessed and collected pursuant to these regulations shall be deposited in the Health Care Benefits Fund for the sole purpose of collecting and disbursing funds for the administrative and operational costs arising from the provisions of Chapter 7, Part 2 of Division 107 commencing with Section 1276600. The purpose of this subsection is to clarify that the fee assessment required by the enabling statute will be used for only one purpose. The regulated companies will benefit from this information as it will make the statute and the assessment process more understandable and easier to comply with and thereby enhance compliance.

## **MANDATES**

These regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

## **COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING:**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

## **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:**

The Commissioner has made an initial determination that the proposed regulations do not have a significant, statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

## **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/ BUSINESSES:**

The Commissioner has made an initial determination that a representative private person or small business may incur additional expenses as a result of these regulations. The additional expense contemplated is the cost of the assessment itself. As detailed in the September 30, 2004 memorandum from Leo Lara of the Statistical Analysis Division of the Department of Insurance (contained in this rulemaking file) the anticipated costs for the Fiscal Year 2003-4 is eighteen cents (. \$00.18) per covered life and twenty six cents (\$00.26) per covered life for the Fiscal Year 2004-5.

## **FINDING OF NECESSITY:**

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

## **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

**IMPACT ON HOUSING COSTS:**

The matters proposed herein will have no significant effect on housing costs.

**ALTERNATIVES:**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

**IMPACT ON SMALL BUSINESS:**

The Commissioner has determined that small businesses may incur additional expenses as a result of these regulations.

**COMPARABLE FEDERAL LAW:**

There are no existing federal regulations or statutes comparable to the proposed regulations.

**TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:**

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

**AUTOMATIC MAILING:**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.



## **WEBSITE POSTINGS:**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find in the leftmost column the link entitled 'Legal.' Click on it. On the 'Legal' page select the 'Proposed Regulations' link, near the top of the page. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search enter "RH003029740" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the section number of a code section that the regulations implement. [For instance, "127660"], or search by keyword ["mandated benefits analysis"]. Then, click on the 'Submit' button to display links to the various filing documents. To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the Mandated Benefits Analysis Regulations link, and click it. Links to the documents associated with these regulations will then be displayed.

## **MODIFIED LANGUAGE:**

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated:

JOHN GARAMENDI  
Insurance Commissioner

By

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RICHARD G. KRENZ  
Assistant General Counsel